

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BRIAN TOOTLE,

Plaintiff,

V.

**CORRECTIONAL OFFICER LONG,
Defendant.**

C.A. No. 20-235 Erie

District Judge Susan Paradise Baxter
Magistrate Judge Richard A. Lanzillo

MEMORANDUM ORDER

Plaintiff Brian Tootle, an inmate incarcerated at the State Correctional Institution at Forest in Marienville, Pennsylvania (“SCI-Forest”), initiated this *pro se* civil rights action on August 13, 2020, against Defendant Correctional Officer Long. This matter was referred to United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates. The case was subsequently reassigned to the undersigned, as presiding judge, on December 28, 2020, with Judge Lanzillo remaining as the referred Magistrate Judge for all pretrial proceedings.

In his *pro se* complaint, Plaintiff alleges that Defendant confiscated his religious materials and denied him access to those materials while he was in the Restricted Housing Unit (“RHU”) in violation of his rights under the Free Exercise Clause of the first amendment to the United States Constitution and the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”). In particular, Plaintiff alleges that Defendant refused to give him access to his religious materials during his entire thirteen-day stay in the RHU, which coincided with the Islamic religious celebration of Ramadan.

On December 28, 2020, Defendant filed a motion to dismiss [ECF No. 21], arguing that Plaintiff's complaint fails to state a claim upon which relief can be granted. On July 19, 2021, Magistrate Judge Lanzillo issued a report and recommendation recommending that Defendant's motion to dismiss be denied as to Plaintiff's First Amendment claim, but granted as to Plaintiff's RLUIPA claim to the extent such claim is brought against Defendant in his individual capacity and for monetary damages; however, it was recommended that Plaintiff be allowed to amend his complaint to assert his RLUIPA claim against Defendant in his official capacity and for injunctive and/or declaratory relief only [ECF No. 26]. This Court adopted Judge Lanzillo's recommendation by Order dated August 13, 2021, and Plaintiff was granted thirty (30) days to file an amended complaint to properly assert his RLUIPA claim [ECF No. 27]. Plaintiff subsequently failed to file an amended complaint in accordance with this Court's Order and, as a result, Plaintiff's RLUIPA claim was dismissed in its entirety, with prejudice [ECF No. 29].

After the parties completed discovery, Defendant filed a motion for summary judgment seeking the entry of judgment in its favor as a matter of law on Plaintiff's remaining First Amendment free exercise of religion claim [ECF No. 38]. Plaintiff, in turn, filed his own motion for summary judgment [ECF No. 45]. Both motions were fully briefed by the parties.

On October 31, 2022, Judge Lanzillo issued a Report and Recommendation [R&R] recommending that both motions for summary judgment be denied [ECF No. 60]. To date, neither party has filed timely objections to the R&R.

Thus, after de novo review of all relevant documents in this case, including the parties' cross motions for summary judgment and oppositions thereto, together with the report and recommendation filed in this case, the following order is entered:

AND NOW, this 21st day of November, 2022;

IT IS HEREBY ORDERED that Defendant's summary judgment motion [ECF No. 38] is DENIED and Plaintiff's summary judgment motion [ECF No. 45] is also DENIED. The report and recommendation of Magistrate Judge Lanzillo, issued October 31, 2022 [ECF No. 60], is adopted as the opinion of the Court.


SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
United States Magistrate Judge